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# Constitutional Law - Bills of Attainder - Legislative Denial of Salary Appropriation

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# RECENT DECISIONS

CONSTITUTIONAL LAW—BILLS OF ATTAINDER—LEGISLATIVE DENIAL OF SALARY APPROPRIATION—Plaintiff, a civil service employee of the Minnesota Department of Conservation, had held the position of Assistant Director of Game and Fish since its creation. In 1953 the legislature enacted an appropriations bill which included a provision that: "Of the amounts appropriated for salaries . . . no part shall be used to pay the salary of an Assistant Director of Game and Fish."[1] Plaintiff brought an action for a declaratory judgment against his immediate superior, contending that the rider was void. He introduced evidence to show that he had incurred the enmity of certain members of the legislature and that this seemingly prompted the passage of the rider. The trial court ruled that the rider fell within the federal and state constitutional prohibitions of bills of attainder.[2] On appeal, *held,* reversed. The provision was simply a refusal of an appropriation for the salary of a certain office. It was not a bill of attainder since there was no evidence sufficient to show that the legislature intended this provision as punishment for a crime or some other act adjudged worthy of penalty. *Starkweather v. Blair,* (Minn. 1955) 71 N.W. (2d) 869.

A bill of attainder is commonly defined as "a legislative act which inflicts punishment without a judicial trial."[3] An inherent feature of these bills is the intention of the legislature that someone be punished for a particular act. Since most bill of attainder cases have involved the validity of loyalty oaths,[4] there is little precedent for the problem of legislative discharge of government employees.[5] The leading decision in this area, and one strikingly similar to the principal case, is *United States v. Lovett*[6] which in-

1 Minn. Laws (1953) c. 741, §38, p. 1013.

2 U.S. CONST., art. I, §10; MINN. CONST., art. I, §11.

3 Cummings v. Missouri, 4 Wall. (71 U.S.) 277 at 323 (1866). See also Ex parte Garland, 4 Wall. (71 U.S.) 333 (1866). These cases also settled the point that the character of a bill of attainder is not altered by a failure to name a person, as long as it provides a means of ascertaining his identity.

Technically, a bill of attainder involves a sentence of death accompanied by forfeiture of property and corruption of the blood. Bills inflicting lesser punishment, termed "bills of pains and penalties" are considered within article I, §10 of the Federal Constitution. Fletcher v. Peck, 6 Cranch. (10 U.S.) 87 (1810). As to what constitutes sufficient punishment to amount to a bill of attainder, see In re Yung Sing Hee, (C.C. Ore. 1888) 36 F. 437 (Chinese exclusion act applied to citizen returning from abroad); McFarland v. American Sugar Refining Co., 241 U.S. 79, 36 S.Ct. 498 (1916) (prohibition of certain business practices if applicable by nature only to the plaintiff); Jones v. Slick, (Fla. 1952) 56 S. (2d) 459 (city officer fined, imprisoned, or removed if found guilty of disobeying a council order by a two-thirds vote of the city council). See also Gaines v. Buford, 1 Dana (31 Ky.) 480 (1833); Opinion to the House of Representatives, 80 R.I. 281, 96 A. (2d) 623 (1953). For a discussion of bills of attainder in colonial America, see Thompson, "Anti-Loyalist Legislation During the American Revolution," 3 ILL. L. REV. 81 (1908).

4 Cummings v. Missouri, note 3 supra; Ex parte Garland, note 3 supra; Garner v. Board of Public Works, 341 U.S. 716, 71 S.Ct. 909 (1951).

5 For a compilation of bill of attainder cases, see 90 L. Ed. 1267 (1946). See, generally, 63 YALE L.J. 844 (1954).

6 328 U.S. 303, 66 S.Ct. 1073 (1946), noted in 95 UNIV. PA. L. REV. 80 (1946); 45 MICH. L. REV. 98 (1946); 46 COL. L. REV. 849 (1946).

volved a rider to a congressional appropriations act which provided that no money made available by that act or any subsequent act was to be used to pay the salaries of Lovett and two other executive department employees.[7] The majority of the Supreme Court, in an opinion by Justice Black, held that the provision was a bill of attainder, construing the statute to bar permanently the three employees from the government service. The Court of Claims, in its decision in the *Lovett* case, stated that "a mere denial of appropriation, however unjust it might be . . . could not successfully be questioned . . ." but that Congress had gone further by prohibiting all future employment by the government.[8] In the principal case, the court distinguished the *Lovett* case on this basis and said that the Minnesota act did not bar the plaintiff from all positions, but left him free to fill any other post. Interpretations of the *Lovett* case by lower federal courts indicate the validity of this distinction.[9] In addition, the Minnesota court declined to find a bill of attainder in the principal case on the basis of a lack of the requisite intent by the legislature to inflict "punishment." The court was unwilling to resort to the sparse records of the debates and committee hearings of the Minnesota legislature nor did it feel justified in relying on evidence of animosity between plaintiff and individual members of the legislature.[10] Justice Frankfurter, in his concurring opinion in the *Lovett* case, declined to find a bill of attainder because of the failure of the act to contain a declaration of guilt. Like the court in the principal case, he refused to go behind the act to investigate its motivation, declaring that the term "bill of attainder" has a fixed meaning in the Constitution, and that acts which deviate from the historical form of these bills are beyond the scope of the prohibition.[11] Certainly the principal case presents an opportunity to reevaluate both the *Lovett* decision and the minority position that the bill of attainder concept should be restricted to its traditional form.[12]

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[7] 57 Stat. L. 450 (1943).

[8] 104 Ct. Cl. 557, 66 F. Supp. 142 at 149 (1945). See Washington v. Clark, (D.C. D.C. 1949) 84 F. Supp. 964, affd. sub nom. Washington v. McGrath, (D.C. Cir. 1950) 182 F. (2d) 375, affd. 341 U.S. 923, 71 S.Ct. 795 (1951), for the statement that there have been many occasions where Congress has included such riders in appropriations acts and that those provisions had not been successfully attacked as bills of attainder.

[9] Washington v. Clark, note 8 supra; Bailey v. Richardson, (D.C. Cir. 1950) 182 F. (2d) 46, affd. 341 U.S. 918, 71 S.Ct. 669 (1951). See also Garner v. Board of Public Works, 341 U.S. 716, 71 S.Ct. 909 (1951).

[10] Principal case at 875-878. In United States v. Lovett, 328 U.S. 303, 66 S.Ct. 1073 (1946), the majority of the Supreme Court was willing to go to the House committee hearings and debates to find that Congress was discharging the employees for alleged subversive activity. The Minnesota Legislature does not have such complete records.

[11] 328 U.S. 303 at 322-327, 66 S.Ct. 1073 (1946). A similar view was propounded by Justice Miller's dissent in Ex parte Garland, note 3 supra, at 382. See Norville, "Bill of Attainder—A Rediscovered Weapon Against Discriminatory Legislation," 26 ORE. L. REV. 78 (1947), for the suggestion that the Lovett case was incorrectly decided and that a better ground for the decision would have been denial of due process because of the arbitrary classification. But see 95 UNIV. PA. L. REV. 80 (1946).

[12] In addition, there is some authority for suggesting that the rider might be consid-